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c 5 Business Names Act, 1990

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CHAPTER 5

An Act respecting Business Names

Assented to June 21st, 1990

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. In this Act,

Definitions

“business” includes every trade, occupation, profession, service or venture carried on with a view to profit;

“corporation” means a corporation wherever or however incorporated;

“Minister” means the Minister of Consumer and Commercial Relations;

“Ministry” means the Ministry of the Minister;

“person” includes an individual, sole proprietorship, unincorporated association, unincorporated syndicate, unincorporated organization, trust, body corporate, and an individual in his or her capacity as trustee, executor, administrator or other legal representative;

“prescribed” means prescribed by the regulations;

“Registrar” means the Registrar appointed under section 3;

“registered” means registered under this Act;

“regulations” means the regulations made under this Act.

2.—(1) No corporation shall carry on business or identify itself to the public under a name other than its corporate name unless the name is registered by that corporation. Registering
name

(2) No individual shall carry on business or identify his or her business to the public under a name other than his or her own name unless the name is registered by that individual. Idem

- Idem (3) No persons associated in partnership shall carry on business or identify themselves to the public, except as a limited partnership carrying on business in accordance with the R.S.O. 1980, c. 241 *Limited Partnerships Act*, unless the name of the partnership is registered by all of the partners.
- Exception (4) Subsection (3) does not apply to prohibit persons associated in partnership from carrying on business or identifying themselves to the public under a name that is composed of the names of the partners.
- Idem (5) This section does not apply to prohibit the use of a name that contains characters from an alphabet other than the Roman alphabet if the name is used in conjunction with the registered name.
- Name to be set out (6) A corporation and such other persons as are prescribed carrying on business under a registered name or, in the case of a corporation, identifying itself to the public under a registered name, shall set out both the registered name as well as the person's name in all contracts, invoices, negotiable instruments and orders involving goods or services issued or made by the person.
- Registrar **3.—**(1) The Minister shall appoint a public servant in the Ministry as the Registrar.
- Delegation of powers (2) The Registrar may delegate any of the duties or powers of the Registrar to any public servant in the Ministry.
- Records (3) The Registrar shall maintain a record of every registration made under this Act or filed under the *Limited Partnerships Act*.
- Available to the public (4) Any person is entitled to examine, during normal business hours, the records maintained by the Registrar.
- Registration **4.—**(1) Subject to subsections (2) and (3), any person, upon paying the prescribed fee, may register a name under this Act for a term of five years.
- Idem (2) The Registrar shall not accept for registration a name that does not comply with the prescribed requirements.
- Idem (3) Only letters from the Roman alphabet, Arabic numerals or a combination of letters from the Roman alphabet and Arabic numerals together with punctuation marks and such other marks as are prescribed may form part of a registered name.

(4) If there is a change in information set out in a registration, the registrant shall register, in the prescribed form within fifteen days after the change, an amended registration showing the change. Changes

(5) If the Registrar has grounds to believe that information registered is not correct or current, he or she may give notice to the registrant requiring that the information be corrected or updated within the time specified in the notice. Correcting information

(6) A registrant receiving a notice under subsection (5) shall comply with the request in the notice or provide evidence to the Registrar that the information registered is correct or current, as the case may be. Idem

(7) The Registrar shall cancel a registration, Cancelling registration

(a) if a name was accepted for registration that does not comply with the prescribed requirements; or

(b) if the registrant requests the cancellation.

(8) The Registrar may cancel a registration if the registrant is given a notice under subsection (5) and does not comply with subsection (6). Idem

(9) The Registrar shall indicate, on the record, every cancellation under subsection (7) or (8). Entering cancellation

(10) Before cancelling a registration other than on the request of the registrant or pursuant to a Court order, the Registrar shall give the registrant twenty-one days notice of the intention to cancel. Notice of cancellation

(11) A person whose application to register a name is refused may appeal to the Divisional Court within twenty-one days after the day of the refusal. Appeal

(12) A registrant who receives a notice under subsection (10) may appeal to the Divisional Court within twenty-one days after receipt of the notice. Idem

(13) If a notice under subsection (10) is under appeal, the Registrar shall not cancel the registration unless a final determination is made upholding the Registrar's decision. Idem

5.—(1) A registrant is entitled to renew a registration before it expires upon paying the prescribed fee. Renewal of registration

Late renewal (2) A registrant is entitled to renew a registration within sixty days after it expires upon paying the prescribed fee for late renewal.

Effective date (3) A renewal made under subsection (1) or (2) is effective on the day immediately following the expiration day of the registration being renewed.

Liability for damages **6.**—(1) A person who suffers damages by reason of the registration of a name that is the same as or deceptively similar to another person's registered name is entitled to recover compensation from the registrant for damages suffered because of the registration.

Idem (2) For the purposes of subsection (1), the compensation is limited to the greater of \$500 and the actual amount of damages incurred.

Cancelling registration (3) In giving a judgment for a plaintiff in an action brought under subsection (1), the court shall order the Registrar to cancel the registration that was the cause of the action.

Ability to sue **7.**—(1) A person carrying on business in contravention of subsection 2 (1), (2) or (3) or subsection 4 (4) or (6) is not capable of maintaining a proceeding in a court in Ontario in connection with that business except with leave of the court.

Idem (2) The court shall grant leave if the person seeking to maintain the proceeding satisfies the court that,

- (a) the failure to register was inadvertent;
- (b) there is no evidence that the public has been deceived or misled; and
- (c) at the time of the application to the court, the person is not in contravention of this Act or the regulations.

Contracts valid (3) No contract is void or voidable by reason only that it was entered into by a person who was in contravention of this Act or the regulations at the time the contract was made.

Certified copies **8.**—(1) Upon payment of the prescribed fee, the Registrar shall issue to any person applying therefor,

- (a) a certified copy of the record with respect to any name registered; or
- (b) if a name is not registered, a certificate so stating.

(2) A certified copy or a certificate issued under this section is admissible in evidence in all courts as proof, in the absence of evidence to the contrary, of the contents of the document or of the non-registration of a name, as the case may be, without proof of the appointment or signature of the Registrar. Idem

(3) For the purpose of this section, the signature of the Registrar may be printed or otherwise mechanically or electronically reproduced. Idem

9.—(1) Records prepared and maintained by the Registrar may be in bound or loose-leaf form or in a photographic film form or may be entered or recorded by any system of mechanical or electronic data processing or by any other information storage device that is capable of reproducing any required information in an accurate and intelligible form within a reasonable time. Form of records

(2) If records maintained by the Registrar are prepared and maintained otherwise than in written form, the Registrar shall furnish any copy required to be furnished in intelligible written form. Idem

(3) A report reproduced from records prepared and maintained otherwise than in written form that purports to be certified by the Registrar is, without proof of the Registrar's office or signature, admissible in evidence to the same extent as the original written records would have been. Idem

(4) The Registrar is not required to produce the original of a document if a copy is furnished in compliance with subsection (2). Copies

(5) For the purpose of this section, a document is a copy of an original if it contains all the information contained in the original. Idem

10.—(1) Every person who, without reasonable cause, contravenes section 2 or subsection 4 (4) or (6) or submits a statement in an application for a registration under this Act that is false or misleading with respect to any material fact is guilty of an offence and on conviction is liable to a fine of not more than \$2,000 or, if the person is a corporation, to a fine of not more than \$25,000. Offence

(2) If a corporation is guilty of an offence under subsection (1), every director or officer of the corporation and every person acting as its representative in Ontario who authorized, permitted or acquiesced in such an offence is also guilty of an Idem

offence and on conviction is liable to a fine of not more than \$2,000.

Regulations

11. The Lieutenant Governor in Council may make regulations,

- (a) prescribing information to be contained in a registration;
- (b) prescribing the duties of the Registrar;
- (c) requiring the payment of fees and fees for late registration and prescribing the amounts thereof;
- (d) prescribing forms and providing for their use;
- (e) exempting any class of person or business from the application of section 2, or any provision in the regulations, and prescribing conditions for any such exemption;
- (f) prescribing and prohibiting the use of connotations, suggestions, words, expressions or phrases in a name shown in a registration;
- (g) governing the custody and destruction of registrations and certificates;
- (h) prescribing fees to be charged for searches and copies of documents or information;
- (i) prescribing any matter required or permitted by this Act to be prescribed.

12. The *Partnerships Registration Act*, being chapter 371 of the Revised Statutes of Ontario, 1980, is repealed.

13.—(1) Section 2 of the *Corporations Information Act*, being chapter 96 of the Revised Statutes of Ontario, 1980, as amended by the Statutes of Ontario, 1982, chapter 23, section 1 and 1984, chapter 3, section 2, is repealed.

(2) Subsection 7 (1) of the said Act, as amended by the Statutes of Ontario, 1989, chapter 69, section 3, is further amended by striking out “2” in the third line.

(3) Subsection 7 (2) of the said Act, as amended by the Statutes of Ontario, 1989, chapter 69, section 3, is further amended by striking out “2” in the third line.

(4) Clauses 15 (a), 18 (b) and (c) of the said Act are repealed.

14.—(1) Clause 1 (e) of the *Limited Partnerships Act*, being chapter 241 of the Revised Statutes of Ontario, 1980, is repealed and the following substituted therefor:

(e) “Registrar” means the Registrar appointed under the *Business Names Act, 1990*. 1990, c. 5

(2) Subsections 3 (5) and (6) of the said Act are repealed.

15.—(1) A name or designation that is stated in a declaration or a renewal thereof filed under section 1 or 9 of the *Partnerships Registration Act* shall be deemed to be registered under and in accordance with this Act and the regulations. Transition
R.S.O. 1980,
c. 371

(2) A registration of a name or style or a renewal thereof that is filed under section 2 of the *Corporations Information Act* shall be deemed to be a registration under and in accordance with this Act and the regulations. Idem
R.S.O. 1980,
c. 96

16. This Act comes into force on a day to be named by proclamation of the Lieutenant Governor. Commence-
ment

17. The short title of this Act is the *Business Names Act, 1990*. Short title

